IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 1370 OF 2005
IN
FIRST APPEAL NO. 644 OF 2004

United India Insurance Co. Ltd., & Anr. ..Appellants.

V/s.

M/s. Regal Footware & Ors. ..Respondents.

Shri R.M. Vernekar i/by M/s. Narichania & Narichania for the Appellants.
Jyoti Chavan for the Respondents.

CORAM : S.B.MHASE & D.B.BHOSALE,JJ.
DATE : APRIL 05, 2005.

P.C. :

. Heard both the sides.

2. By order dated 18th June, 2004 passed in Civil Application No. 1856/2004 in First Appeal No. 644/2004, the present applicants were directed to deposit an amount of Rs. 12,23,588/- out of the total decretal amount to be paid to the Respondents; since the said amount was estimated as per the report made by the Surveyor of the applicants. A demand draft of the said amount of Rs. 12,23,588/- drawn in the name of the M/s. Regal Footwear was received by the Respondents. The applicants were further directed by

that order dated 18.6.2004, that the Applicants shall deposit the rest of the decretal amount in this court within four weeks. It was further directed that on deposit of such amount, the Respondents are at liberty to withdraw the same by giving a Bank Guarantee of a Nationalized Bank within two weeks thereafter. However, since the applicants could not deposit the said amount within the specified time, the present civil application is moved by the Applicants, for condonation of delay in depositing the said balance of the decretal amount of Rs. 24,11,290/-. The learned counsel for the applicants submit that due to the administrative exigency and procedure of the applicants Company, the said amount could not be deposited within four weeks as directed by the Honourable Court. The applicants, therefore, pray in the present civil application, to condone the delay of depositing the amount within the stipulated time granted by the court. The applicants submit that they are ready to deposit the balance of the decretal amount of Rs. 24,11,290/- in this court and that the said amount is calculated upto 29th July, 2004.

3. The learned counsel appearing for the respondents vehemently opposed for such condonation of delay in depositing the said balance amount by the

applicants on the ground that the present civil application filed by the Applicants is wholly misconceived and it is only after the Respondents had initiated execution proceedings against the applicants. It is further submitted that it is for the respondents to execute decree since the stay has been vacated as a result of non-compliance of the order by the applicants. It is further submitted that it is not necessary for the respondents to furnish bank guarantee once the execution proceedings are filed.

4. We have noticed that the Applicants being the Insurance Company, have already disputed the claim of the Respondents. In fact, the amount which was to be deposited by the Applicants was actually a disputed amount between the parties. If the prayer for condonation of delay in depositing the balance amount is not granted, in such circumstances, then the amount will have to be recovered in the execution proceedings which may be directly paid to the respondents. Moreover, presently, the inability of the respondents in not giving the bank guarantee is also a factor which goes against the respondents. The Respondents have, however, showed willingness to deposit the title of their business in this court. We make it clear

that the courts are not called upon to act as loaning agency or Banks. On the contrary, by depositing such title deeds with the Bank, a bank

guarantee can be obtained by the respondents. However, it seems that the whole attempt on the part of the respondents, prima facie, is to take amount from the applicants without giving bank guarantee. Taking into consideration over all view of the matter, we do not find any merit in the contention of the Respondents and in the circumstances of the case, the interest of justice requires that it will be appropriate to allow the applicants to deposit the said amount in this court within two weeks from today.

5. We, therefore, pass following order.

ORDER

1. Civil Application is allowed.

2. The applicants are hereby allowed to deposit the rest of the decretal amount as directed by this court in order dated 18th June, 2004 in C.A. No. 1856/2004 in First Appeal No. 644/2005 within a period of two

weeks from today.

3. We further direct that since the payment is already delayed in this process, the applicants shall further calculate the interest on the said amount till date and deposit such deficit amount in this court within a period of four weeks.

4. After the deposit of the said amount, if the respondents desire to withdraw the said amount, as directed by the above referred order, the respondents shall withdraw the same by furnishing bank guarantee within a period of six weeks.

5. With the above directions, the Civil Application is disposed of.

(D.B.BHOSALE,J) **(S.B.MHASE,J)**